IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 750 of 2002
with
CIVIL APPLICATION No. 2850 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR DUBEY
Versus
RAMUBHAI PUJABHAI PRAJAPATI

Appearance:
MR AMIT J SHAH for Appellant No. 1
MR KN THAKUR for Respondent No. 1-2
MR YV VAGHELA for Respondent No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 03/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

Admit. Mr. Vaghela, learned advocate waives service of admission on behalf of respondent. By consent of the counsel appearing in the matter, appeal is fixed forthwith. Filing paper book is dispensed with.

2. Considering the points raised in the appeal and the order under challenge, we are of the view that this appeal can be disposed of without calling for R & P from the Tribunal. Mr. Shah, learned advocate appearing on behalf of the appellant has furnished xerox copies of the bunch of papers, which is part of the documents presented with the Tribunal when the appellant claimant has filed claim petition for seeking compensation against the respondent under the provisions of the M.C. Act. xerox copies of the documents are also duly furnished to Mr. Vaghela, who appeared for respondent original opponent. During hearing, Mr. Shah has taken us through the application for compensation filed by the appellant original claimant before the M.A.C.Tribunal filed against the respondent as well as the xerox copy of the FIR given by Shri Darshanbhai Shah dated 29.10.1993, which was registered at Ellisbridge Police Station, Ahmedabad City. FIR dated 29.10.1993 is in respect of the accident, which is occurred on 28.10.1993 at about 10-00 p.m. We have also gone through the medical reports etc. and the medical certificate issued by the doctor in respect of the injuries and disability sustained by the appellant applicant in an accident. The claim application for seeking compensation was filed by the appellant applicant on account of injuries sustained by him in an accident which had occurred on 28.10.1993 at 10-00 p.m. for which, Shri Darshanbhai has filed complaint before the police on 29.10.1993. We are not discussing in detail as the parties to the appeal has to lead evidence to prove their case. However, as found from the FIR filed by Shri Darshanbhai, who was an eye witness to the accident, has indicated that on 28.10.1993 at 9-00 p.m. opposite Shymal Bungalow, Ambawadi Road due to rash and negligent driving of the loading rickshaw by the driver and on the wrong side, the said rickshaw dashed with the scooter and the person on the scooter was fallen down. The scooter was also badly damaged and the person, who has sustained injuries was having profuse bleeding. The complainant has also highlighted the registration numbers of the loading rickshaw as well as scooter. As per the complaint, the rickshaw driver has ran away leaving his rickshaw at the place of the accident. The complainant

and his other associates had taken away the injured to the hospital of Dr. Jarmalwala and as per the advise of Doctor Jarmarwala, the injured was taken to Vadilal Sarabhai Hospital, Ahmedabad and as the condition of the injured was very serious, he was not in a position to speak due to injuries sustained by him. The complainant has also disclosed the name of injured as Shri D.K. Dube. In view of the complaint filed by Shri Shah, the offence was registered and police has drawn panchnama of the place of accident in presence of two panchas namely Prahladbhai Bhavanbhai Prajapati and Amrutbhai Chavda.

3. As found from the claim application filed by the appellant claimant, on account of the injuries sustained by him in an accident, because of the negligent driving of the rickshaw, the claim application was presented under Motor Vehicles Act before the M.A.C. Tribunal, Court No. 4, Ahmedabad on 1st March, 1994 and the said claim petition was registered as M.A.C. Petition No. 40 of 1994. The claim application is filed for claiming Rs. 5 lacs by way of compensation. The respondent no. 1 is the owner of the vehicle i.e. loading rickshaw and opponent no. 2 Shri Jayantibhai Hirabhai Prajapati was at the relevant time was the driver of the rickshaw. At the time of filing application, the applicant has disclosed his age as 37 years. At this juncture, we are not required to discuss in respect of the claim put forward by the appellant as we are only required to consider the order under challenge dated 18th December, 2001 passed by the Tribunal. As found from the application, the appellant has submitted application in the pending claim application before the Tribunal on 18th December, 2001 and the said application was filed as per the provisions of Section 140 of the M.V. Act namely the appellant claimant has claimed compensation under no fault liability and the said application has given Ex. 32. The said Ex. 32 was heard and the Tribunal has rejected the said application and observed that as the main claim petition filed by the claimant is fixed for leading oral evidence and the fact that the accident, which has occurred on October, 1993, the Tribunal has to examine about permanent/partial disability through evidence of the Doctor by relying upon Section 142 of the M.V. Act. According to Tribunal to avoid duplication of oral evidence and the claim petition has reached for recording the evidence, the Tribunal has rejected the application by holding that the applicant has moved the application at belated stage. During hearing, it was brought to our notice that by the time, the claimant had examined some of the witnesses and Tribunal has also issued summons in favour of the witnesses to be examined

by the claimant. However, according to Mr. Shah that in view of the fact that the appellant claimant is required to examine to prove his case many witnesses and it is not possible for the Tribunal to decide the claim application even in near future for about 2 to 3 years.

4. The appellant has also produced various documents including medical certificate and the medical report which are yet to be proved in evidence and as found from the documents, a report is submitted by Dr. Kalpesh Shah, Chief Radiologist, Ahmedabad Neurological Research Centre, Ahmedabad dated 29.10.1993 and part of the said report is reproduced as under :-

> "Fractures are seen involving left maxilla, left zygoma and lateral wall of left orbit with associated scalp swelling.
> Fracture is also seen through mandible in left para median region.
>
> Haematoma is noted in left side of paranasal sinus, extending to air-way."

The appellant has also produced the certificate issued by Balkisan N. Desai, M.S. Neuro Surgeon attached to Vadilal Sarabhai Hospital dated 3.1.2001. We reproduce part of the observation made by doctor, which reads as under :-

> "He has disfigurement of face. His headache is continuous, dull, aching type throbing type with episodic exacerbations, when it becomes severe throbing type, always associated with positional vertigo, such 2 to 3 episodes every month, each lasting few hours to some times days, forcing him to rest during the episodes and requires medical aids."

5. Mr. Shah has also placed reliance upon the decision in the matter of Shivaji Dayanu Patil and another Vs. Vatschala Uttam More, reported in 1991 ACJ p.777, wherein, the Hon'ble Supreme Court has observed in para 12 as under :-

> "It is thus evident that section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited

amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. The same approach has been adopted by this Court while construing the provisions of the Act."

5/A. Mr. Shah, learned counsel for the appellant, has also invited our attention to the judgement of the Hon'ble Supreme Court in the case of KAUSHNUMA BEGUM (SMT.) AND OTHERS VS. NEW INDIA ASSURANCE CO. LTD. & OTHERS, reported in (2001) 2 SCC 9. In that case the accident occurred on 20.3.1986. The vehicle involved in the accident was a jeep. It capsized while it was in motion. The cause of the capsize was attributed to bursting of the front tyre of the jeep. In the process of capsizing, the vehicle hit against one Haji Mohammad Hanif who was walking on the road at that ill-fated moment and consequently that pedestrian was crushed and succumbed to the injuries sustained in the accident. The heirs and legal representatives of the deceased filed claim petition before the Tribunal claiming compensation of Rs.2,36,000=00 as compensation on the ground that the deceased was aged 35 years and that he was earning Rs.1500/- per month. The Tribunal rejected the claim application for compensation. However, the Tribunal granted compensation under Section 140 of the Motor Vehicle Act for an amount of Rs.50,000=00. The High Court dismissed the appeal of the appellants- claimants.

5/B Being aggrieved and dissatisfied with the said judgement of the High Court, the claimants filed appeal before the Hon'ble Supreme Court.

5C In paragraph 9,10 and 11 the Hon'ble Supreme Court has considered the Scheme of the Motor Vehicles Act. In paragraphs 12 and 13 of the judgement the Hon'ble Supreme Court considered the decision in the case of RYLANDS Vs. FLETCHER (1868) 3 HL 330 and observed as under :-

5D "para 12 - Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not

the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the rule in RYLANDS Vs. FLETCHER (Supra) can apply in motor accident cases. The said rule is summarised by Blackburn, J. thus :

"The true rule of law is that the person, who for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequences of its escape. He can excuse himself by showing that the escape was owning to the plaintiff's default, or perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

5E Para 13. The House of Lords considered it and upheld the ratio with the following dictum :-

"We think that the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

5F In para 14 of the judgement, the Hon'ble Supreme Court has held as under :-

"para 14 - The above rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. WINFIELD ON TORT has brought out even a chapter on the "Rule in Rylands Vs. Fletcher (Supra). At p.543 of the 15th Edn., of the celebrated work the learned author has pointed out that :-

"over the years Rylands V. Fletcher (Supra) has been applied to a remarkable variety of things; fire, gas, explosions,

electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation".

5G He has elaborated seven defences recognised in common law against action brought on the strength of the rule in Rylands V. Fletcher (Supra). They are :-

(1) Consent of the plaintiff i.e. volenti non fit injuria.

(2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.

(3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply.

(4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.

(5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility.

(6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply.

(7) Remoteness of consequences i.e the rule cannot be applied ad infinitum; because even according to the formulation of the rule made by Blackburn, J. the defendant is answerable only for all the damage "which is the natural consequence of its escape."

5H In para 15 of the judgement, the Hon'ble Supreme Court has considered the judgement in the cases of Rylands V. Fletcher (Supra), M.C. Mehta Vs. Union of India (1987) 1 SCC 395, Union Carbide Corporation Vs. Union of India (1991) 4 SCC 584, Gujarat SRTC Vs. Ramanbhai Prabhatbhai (1987) 3 SCC 234. Thereafter, in paragraph 19 and 20, the Supreme Court further held as under :-

"para 19 - Like any other common law principle,

which is acceptable to our jurisprudence, the rule in Rylands V. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in claims for compensation made in respect of motor accidents."

5I The Honourable Supreme Court in para 20 has further held thus :-

"No fault liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former, the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability creates without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the M.V. Act permit that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."

5J The Hon'ble Supreme Court allowed the appeal of the claimants and granted full compensation to them.

5K The learned counsel for the appellant has also invited our attention to the judgement of this Court in case of PAYALBEN JAYESHBHAI YAGNIK VS. JAYESHBHAI G. YAGNIK in F.A. No. 665 of 2002 delivered by this Court on 21.11.2002, wherein, one of us (Coram : K.M. Mehta, J.) was a party where this court has considered Section 92A of the old Act and Section 140 of the new Act and the judgements of the Hon'ble Supreme Court in the case of K. NANDAKUMAR VS. MANAGING DIRECTOR, THANTHAI PERIYAR TRANSPORT CORPORATION LTD, reported in 1996 ACJ 555, ORIENTAL INSURANCE CO. LTD VS. HANSRAJBHAI V. KODALA AND OTHERS reported in (2001) 5 SCC 175 and judgements of this court in the case of NEW INDIA ASSURANCE CO. LTD.

VS MITHAKHAN DINAKHAN NOTIYAR AND OTHERS, reported in 1995 (2) GLR 1111 and ANITABEN WD/O. NALINKUMAR MANUBHAI SHAH AND OTHERS VS. ABDUL HAKIM ALLARKHAN SHAIKH AND OTHERS reported in 1995 (1) GLR p.479, where also similar principle regarding "no fault liability" has been stated.

6. In light of the decision of the Apex Court and the application filed by the applicant under Section 140 of the M.V. Act, which was rejected by the Tribunal on the ground that the applicant has filed the application at belated stage. It is true that main claim petition is filed which is of the year 1994 and the application for no fault liability under Section 140 of the M.V. Act was represented on 2.11.2001. While dealing with the application under Section 140 of the M.V. Act, the Tribunal has only required to examine the factum of accident, in which the claimant has sustained injuries. The FIR regarding the accident and other corroborative evidence namely, panchnama and the panchnama of place of accident and medical certificate issued by the doctor in respect of the injuries sustained by the injured.

7. In view of above and as found from the FIR filed by Shri Darshanbhai Shah, who was an eye witness to the accident, shows that the appellant claimant has sustained injuries in an accident on 28.10.1993 at night and the appellant injured was removed for treatment and admitted in the Vadilal Sarabhai Hospital, Ahmedabad. Police has also prepared panchnama in presence of two panchas on the very day on the complaint of the complainant i.e. on 29.10.1993.

8. In view of above and as per settled legal position, the appellant has filed claim petition under M.V. Act in the year 1994 and the same is pending and the said claim petition is at the stage of recording evidence and there is no likelihood of disposal of the said claim petition in near future. Accordingly, in our view, the Tribunal was require to examine the application filed under Section 140 of the M.V. Act and the applicant is entitled for sum of Rs.25,000=00.

9. In view of the decision of the Apex Court, the appellant original claimant has filed application for seeking compensation under M.V. Act in the year 1994 and the same is pending and said claim application is at present at the stage of recording of evidence and there is no likelihood of disposal of the said claim petition in near future. Though, belatedly the appellant claimant had filed application on no fault liability compensation under Section 140 of the M.V. Act and the rejection of

the said application by the learned Tribunal as observed earlier was on the ground that the Tribunal has to examine whether the applicant has sustained any permanent / partial disability as contemplated under Section 142 of the M.V.Act or not and the same requires consideration and the Tribunal has fixed the claim application for recording evidence.

10. We are not discussing anything in respect of the merit of the case on the basis of which the appellant claimant has filed application for compensation against the opponent and the parties have to prove their case by leading evidence. In our view, when the application is filed on no fault liability, all the documents, which were relied upon by the appellant - claimant including the medical certificate showing disability issued by the doctor are very much on the record and the Tribunal is suppose to consider the application of the claimant under no fault liability in light of the decision of the Apex Court and to pass order for granting compensation, which is available to the claimants on no fault liability. Admittedly, the claim application is filed by the claimant in respect of the accident which is occurred on night on 28.10.1993 and all the documents namely copy of the FIR, copy of the panchnama of the place of accident, medical certificate issued by doctor showing the injuries sustained by the appellant in an accident for which, the claim application is filed in the year 1994. In our view, the rejection of the application by the Tribunal on the ground stated in the order deserves to be set aside and while deciding this appeal, we direct the respondent to deposit a sum of Rs.25,000=00 with M.A.C.Tribunal and Mr. Vaghela, learned advocate has submitted that the amount of Rs.25,000=00 will be deposited within 4 weeks from today. The Tribunal is accordingly directed to permit the claimant to withdraw the said amount on filing his undertaking that amount of Rs.25,000=00 on no fault liability be adjusted when the Tribunal consider the application for compensation while awarding compensation to the appellant claimant. We are also inclined to observe that as the claim application is of 1994 and as informed by the counsel appearing in the matter, there is a progress in the matter, we hope that the Tribunal shall dispose of the said claim petition as early as possible by end of 31st December, 2003. The counsel appearing in the matter have also assured this Court that they will give full cooperation to enable the Tribunal to dispose of the claim petition as early as possible. The appeal is accordingly, allowed in above terms with no order as to costs.

11. In view of the order passed in main First Appeal, no order in Civil Application and accordingly, Civil Application is disposed of. Notice is discharged.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
pallav